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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-86

JOHN B. WALSH, JR., et al.,

Appellants,

v.

MONTGOMERY COUNTY, MARYLAND, *et al.*,

Appellees.

On Appeal from the Court of Appeals of Maryland

JURISDICTIONAL STATEMENT

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MONTGOMERY COUNTY, MARYLAND, *et al.*,

Appellees.

On Appeal from the Court of Appeals of Maryland

JURISDICTIONAL STATEMENT

The Appellants appeal from the opinion and order of the Court of Appeals of Maryland, entered on April 14, 1975, reversing an order of the Circuit Court for Montgomery County, Maryland, which struck down on constitutional grounds a financial disclosure statute enacted by the County Council for Montgomery County, Maryland.

Appellants submit this Statement to establish that the Supreme Court of the United States has jurisdiction of this appeal, and that the appeal presents substantial questions involving the Constitution of the United States.

OPINION BELOW

The opinion and order of the Court of Appeals of Maryland below is reported in ___ Md. ___ and 336 A.2d 97 (1975) and is attached hereto as Appendix A. The opinion of the trial court (the Circuit Court for Montgomery County, Maryland) below, dated October 10, 1974, is unofficially reported in *The Daily Record*, November 25 and 26, 1974.

JURISDICTION

This suit was brought initially pursuant to the provisions of Subtitle 4, Section 3-401, *et seq.*, Courts and Judicial Proceedings Volume, Annotated Code of Maryland, in the Circuit Court for Montgomery County, Maryland. It requested a declaratory judgment and injunctive relief to set aside as unconstitutional the Montgomery County Financial Disclosure Statute. On April 14, 1975, the Court of Appeals of Maryland reversed an order of the Circuit Court for Montgomery County which declared the said statute unconstitutional. The Appellants thereupon filed a notice of appeal to this Court with the Clerk of the Court of Appeals of Maryland. The jurisdiction of this Court to review the decision of the Court of Appeals of Maryland by direct appeal is confirmed by Title 28, United States Code, Sections 1257(2) and 2101(b).

QUESTIONS PRESENTED

The Court of Appeals of Maryland has held as constitutional Chapter 20A of the Montgomery County Code which requires, *inter alia*, detailed financial disclosure of income, assets, and liabilities of at least twenty-one of Montgomery County employees, their spouses and children, including the Appellants. The questions presented are:

(1) Whether Chapter 20A constitutes an unreasonable, unnecessary and overly broad invasion of the Appellants' rights of privacy in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution in the absence of a compelling need for such information.

(2) Whether Chapter 20A violates the Appellants' right to hold appointed or merit government employment in violation of the above-listed provisions of the Federal Constitution.

(3) Whether Chapter 20A is so uncertain, indefinite, contradictory, vague, ambiguous and lacking in reasonable standards and guidelines so as to violate the Appellants' rights of due process guaranteed by the Fourteenth Amendment of the United States Constitution.

(4) Whether Chapter 20A violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in that it provides public disclosure of financial statements of certain employees, including some of the Appellants, yet permits confidential filing for other employees.

STATUTES INVOLVED

The First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States and Bill Number 48-73, entitled "Financial Disclosure" to be designated as Chapter 20A of the Montgomery County Code 1972, as amended, enacted on June 18, 1974.

STATEMENT

In June 1974, the County Council for Montgomery County, Maryland enacted, and the Montgomery County Executive signed, Bill Number 48-73, entitled "Financial Disclosure", effective June 28, 1974, to be designated Chapter 20A of the Montgomery County Code of 1972, as amended.

Chapter 20A required, *inter alia,* the preparation and filing of sworn financial disclosure statements on an annual basis by certain governmental officials and employees of Montgomery County, Maryland. On July 29, 1974, the Appellants filed suit in the Circuit Court for Montgomery County, Maryland seeking a declaratory judgment that Chapter 20A was illegal, null, void, and unconstitutional, in violation of the federal and state constitutions, and seeking a permanent injunction against its enforcement. Specifically, the Appellants alleged in their bill of complaint that the Chapter violated their rights guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States. (Bill of Complaint, paragraphs 13, 14, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 29, 30, 32, 34, 35, 37, 42 and 43.)

All of the Appellants, with two exceptions, are employed by Montgomery County. The two exceptions are spouses of employees. With one exception, all such employees are

merit system employees and all are required to file sworn statements under the provisions of Chapter 20A. Some of the Appellants are required to file statements which are to be made available to the public for examination and copying (Chapter 20A, Sections 20A-3(b) and 20A-4(h)). Additionally, such statements are to be retained as a public record for a period of four years following the termination of employment with the County of the person filing the statement (Chapter 20A-4(h)). Other Appellants are required to file disclosure statements which are not to be made available to the public.

The Appellees are Montgomery County, Maryland; James P. Gleason, County Executive for Montgomery County; William H. Hussmann, Chief Administrative Officer for Montgomery County; Richard S. McKernon, the County Attorney for Montgomery County; and Albert W. Gault, the County Director of the Department of Finance.

Prior to reviewing the proceedings before the Circuit Court for Montgomery County, a brief description of Chapter 20A and the financial statements it requires is necessary. As noted above, Chapter 20A would mandate, *inter alia,* the preparation and filing of sworn financial disclosure statements on an annual basis by certain government officials and employees, including seventeen of the Appellants. For the years in which they are filed, such financial statements must include a schedule of all interests in real property wherever situated; a schedule of all interests in any business, entity, trust, or profession; a schedule of all other assets of every nature whatsoever in excess of $1,000.00 each; a schedule of all income received, and a statement of the gross income of the person's spouse, and all dependent children; a schedule of each gift of property, money, or services . . . in excess of $50.00 in aggregate value received from any one person, excluding relatives up to a

first cousin; a schedule of all offices and directorships; a schedule of all liabilities, excluding retail credit accounts, to any person doing business within the County or who is regulated, inspected, or licensed by the County, including, in certain instances, the liabilities of a spouse or child; and a list of each liability in excess of $1,000.00 regardless of to whom the liability is owed; the scheduling of any interest held by the spouse, father, mother, brother, sister or child of the person making the statement if such interest is directly or indirectly controlled by the reporting official or employee; and a list of all members of the immediate family who are employed by the County in any capacity.

Prior to a hearing before the Circuit Court for Montgomery County, Maryland, all parties filed motions for summary judgment. Additionally, the Board of Trustees of Montgomery Community College, the Board of Education of Montgomery County, and the American Civil Liberties Union filed briefs as *amici curiae* in support of the Appellants' position. The Circuit Court held a two-day hearing on September 9 and 10, 1974, and thereafter issued an extensive and comprehensive forty-six page opinion and order declaring Chapter 20A "unconstitutional, null and void in its entirety." Briefly, the Court held that Chapter 20A violated, *inter alia*, the First, Fourth, Ninth and Fourteenth Amendments of the United States Constitution and the comparable sections of the Declaration of Rights of the Maryland Constitution.

Montgomery County, *et al.*, noted an appeal which was heard on writ of certiorari by the Court of Appeals of Maryland. On April 14, 1975, that Court issued an opinion and order reversing the judgment of the Circuit Court, holding that Chapter 20A did not violate the Appellants'

right to privacy, or any right to hold public employment. Further, the Court found that the Chapter neither violated the guarantees of equal protection nor those of due process of law. From that opinion and order, the Appellants have appealed to this Court under the provisions of 28 United States Code, Section 1257(2) and 2101(b).

THE QUESTIONS ARE SUBSTANTIAL

I. CHAPTER 20A CONSTITUTES AN UNREASONABLE, UNNECESSARY AND OVERBROAD INVASION OF THE APPELLANTS' RIGHT OF PRIVACY IN VIOLATION OF THE FIRST, FOURTH, FIFTH, NINTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

This Court has recognized that a right of personal privacy or a guarantee of certain areas or zones of privacy exists under the Federal Constitution; *Roe v. Wade*, 410 U.S. 113, rehearing denied, 410 U.S. 959 (1973). See *Paris Adult Theatre I v. Slayton*, 413 U.S. 49; *Griswold v. Connecticut*, 381 U.S. 479 at 484-485. As the Court observed in *Roe v. Wade, supra*, at 410 U.S. 152:

> The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251, 11 S. Ct. 1000, 1001, 35 L.Ed. 734 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, *Stanley v. Georgia*, 394 U.S. 557, 564, 89 S. Ct. 1243, 1247, 22 L.Ed. 2d 542

(1969); in the Fourth and Fifth Amendments, *Terry v. Ohio,* 392 U.S. 1, 8-9, 88 S. Ct. 1868, 1872-1873, 20 L.Ed. 2d 889 (1968), *Katz v. United States,* 389 U.S. 347, 350, 88 S. Ct. 507, 510, 19 L.Ed. 2d 576 (1967); *Boyd v. United States,* 116 U.S. 616, 6 S. Ct. 524, 29 L.Ed. 746 (1886), see *Olmstead v. United States,* 277 U.S. 438, 478, 48 S. Ct. 564, 572, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting); in the penumbras of the Bill of Rights, *Griswold v. Connecticut,* 381 U.S. 479, at 484-485, 85 S. Ct. at 1682 (Goldberg J., concurring); or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see *Meyer v. Nebraska,* 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L.Ed. 1042 (1923). These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," *Palko v. Connecticut,* 302 U.S. 319, 325, 58 S. Ct. 149, 152, 82 L.Ed. 288 (1937), are included in this guarantee of personal privacy.

The concept of a right to or freedom of privacy was described by Justice Gray speaking for the Court in *Union Pacific Railway Company v. Botsford, supra,* at 141 U.S. 250, 251:

> No right is more sacred, [n]or is more carefully guarded . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law. As well said by Judge Cooley, "The right to one's person may be said to be a right of complete immunity: to be let alone."

See also, *Terry v. Ohio,* 392 U.S. 1, 8-9. More recently, this Court reaffirmed the "fundamental . . . right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy," *Stanley v. Georgia,* 394 U.S. 557, 564 and cited with approval Mr. Justice Brandeis' dissent in *Olmstead v. United States,* 277 U.S. 438, 478.

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature; of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone – the most comprehensive of rights, and the right most valued by civilized man.[1]

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[1] The federal constitution guarantees the "right to remain silent" apart from the protections of the Fifth Amendment; *e.g., DeGregory v. Attny. Gen.,* 383 U.S. 825 (1966); *Sweezy v. New Hampshire by Wyman,* 354 U.S. 234 (1967). In *DeGregory, supra,* at 829, which involved a statute compelling disclosure of involvements in Communist activities, this Court observed:

> Investigation is a part of lawmaking and the First Amendment, as well as the Fifth, stands as a barrier to state intrusion of its privacy. . . . There is now showing of "overriding and compelling state interest" that would warrant intrusion into the realm of political and associational privacy protected by the First Amendment. . . . The First Amendment prevents the Government from using the power to investigate enforced by the contempt power to probe at will and without relation to existing need. The

(cont'd)

On December 31, 1974, the Congress of the United States joined this Court in recognizing that the right to privacy is a personal and fundamental right guaranteed by the Federal Constitution. On that day the 93rd Congress enacted Public Law 93-579 to be known as the "Privacy Act of 1974." Section 2(a)(4) states: "The Congress finds that . . . (4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States. . . ."[2]

By requiring the Appellants to file sworn financial statements disclosing their personal financial affairs and those of their spouses and children, Chapter 20A of the Montgomery County Code unconstitutionally and illegally invades the Appellants' rights of privacy in the protection of their personal financial affairs and those of their spouses and children. Such invasion violates the provisions of the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

(Footnote 1 cont'd)

> present record is devoid of any evidence that there is any Communist movement in New Hampshire. . . . There is no showing whatsoever of present danger of sedition against the State, the only area to which the authority of the State extends. . . . New Hampshire's interest on this record is too remote and conjectural to override the guarantee of the First Amendment that a person can speak or not, as he chooses, free of all governmental compulsion.

[2] The Privacy Act of 1974 is "designed to prevent the kind of illegal, unwise, overbroad investigation and record surveillance of law-abiding citizens produced in recent years from action of some overzealous investigators, and the curiosity of some government administrations, or the wrongful disclosure and use, in some cases, of personal files held by Federal Agencies. S. Rep. No. 93-1183, 4 U.S. Code Cong. and Ad News 6916, 93rd Cong., 2nd Session, 1974.

The Appellants recognize that there is no absolute right to the privacy of one's financial affairs, and that any such right must be carefully balanced with the right of government to assure that citizens maintain trust and confidence in their local public employees. There is a heavy burden of proof required, however, from any government which seeks to abridge the individual citizen's right of privacy. This Court has set forth the tests where fundamental personal liberties are involved,

> . . . the regulation limiting these rights may be justified only by a compelling state interest, (citation) and . . . legislative enactments must be narrowly drawn to express the legitimate state interests at stake (citations) Roe v. Wade, supra, 155.

Additionally, the Court has held that, even with a legitimate and substantial purpose, a regulation may not be so broad as to stifle fundamental personal liberties when alternative and narrower means are available to achieve the same purpose. *Shelton v. Tucker,* 364 U.S. 479.

The Appellants and all others similarly situated have an important and substantial interest in maintaining the privacy of their families' financial affairs. For those Appellants whose statements are to be inspected by anyone who wishes to see them, copies are to be made available to anyone who can pay the costs of reproduction. Disclosure of personal financial affairs subjects them to solicitation from a variety of salespersons and others. It would encourage harrassing lawsuits and/or other unwanted demands. To persons who have not been fortunate enough to accu-

mulate many worldly assets, disclosure to the public of these details subjects them to humiliation and embarrassment before their friends, neighbors, co-workers and others. To others who have accumulated certain assets, a disclosure threatens their peace of mind; exposes them and their families to various criminal elements in our society; and opens the way to potential extortion, kidnapping, robbery and burglary.

In weighing the opposing interests, the lower court observed:

> The financial disclosure requirements of Chapter 20A before this Court encompass indiscriminately persons holding employment for Montgomery County and its offices, agencies and departments, regardless of the nature or scope of activity of such offices, agencies, and departments. The defendant County Council made no effort to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; that is, to such dealings which might have some rational connection with or bearing upon, or which might be affected by, the functions, duties, responsibilities or jurisdictions of any particular employee. Walsh, et al. v. Montgomery County, et al., E-49873 (Circuit Court, October 10, 1974) p. 11.

In its opinion upholding the requirements of Chapter 20A the Court of Appeals of Maryland refused to recognize the fundamental nature of the right of public employees to the privacy of their financial affairs, causing improper balancing of the employee-governmental interests.

This Appeal involves a fundamental question of personal liberty for thousands of public employees: those affected

by Chapter 20A and those who hold employment at all levels of state and local government. This Court on three earlier occasions has declined to take jurisdiction and hear oral arguments: (1) *Illinois State Employees Association v. Walker*, 57 Ill. 2d 512, 315 N.E. 2d 9, *cert. den., Troopers Lodge v. Walker*, 419 U.S. 1058 (1974); (2) *Fritz v. Gorton*, 417 U.S. 902 (1974), *appeal dismissed*, and (3) *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409 (1972), *appeal dismissed*, 412 U.S. 925 (1973). The Appellants, however, submit that the time must come for this Court to set the judicial balance for these conflicting interests. See *California Bankers Association v. Schultz*, 416 U.S. 21 (1974) (concurring opinions of Justices Powell and Blackmun).

Appellants submit that the decision of the Court of Appeals of Maryland holding that Chapter 20A does not unlawfully violate their rights of privacy presents a substantial Federal question to this Court.

II. CHAPTER 20A VIOLATES THE APPELLANTS' RIGHT TO HOLD EMPLOYMENT IN VIOLATION OF THE FIRST, FOURTH, FIFTH, NINTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

This Court has indicated that the Federal Constitution protects the rights of citizens to follow any lawful business, profession or occupation subject only to rational regulation by the government which is necessary to protect legitimate public interests. *E.g., Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957); *Smith v. Texas*, 233 U.S. 630 (1914); *Dent v. West Virginia*, 129 U.S. 114 (1889). While it is true that at one time service was considered as a privilege conditional upon the forfeiture of

the constitutional rights, that view has been soundly rejected in favor of a right rooted in the First Amendment to hold office without discrimination or overbroad restriction. As the Court recognized in *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961):

> [that] constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory. *Weiman v. Updegraff, supra*, at 192. The fact . . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution. *Torasco v. Wakins*, 367 U.S. 488 at 495-496.

See also, *Pickering v. Board of Education*, 391 U.S. 563 (1968) (teacher's false but nonmalicious statements not sufficient basis for dismissal); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967) (membership in Communist Party may not be sole basis for dismissal of teacher); *Bond v. Floyd*, 385 U.S. 116 (1966) (statements alleged to show disloyalty not sufficient basis for legislature's refusal to seat member); *Shelton v. Tucker, supra*, 364 U.S. 479 (1960) (statute requiring teachers to disclose associations is overbroad); *Slochower v. Board of Education*, 350 U.S. 551 (1956) (city employees may not be required to forfeit privilege against self-incrimination); *Wieman v. Updegraff*, 344 U.S. 183 (1952) (public employees may not be dismissed under overbroad statute for membership in "subversive" organizations); *Minielly v. State*, 242 Ore. 490, 411 P.2d 69 (1966) (civil servant's right to run for office may not be restricted by overbroad statute). Also relevant to this issue is *Board of Regents v. Roth*, 408

U.S. 564 (1972); *Thompson v. Gallagher*, 489 F.2d 443 (5th Cir. 1973).

The trial court held that Chapter 20A "invades the rights of the plaintiffs (Appellants) to hold their employment in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. In so finding, the court relied upon principles set forth by the Supreme Court of California in cases involving permissible limitations upon public employment. In *City of Carmel-by-the-Sea v. Young*, 466 P.2d 225 at 229, Justice Burke wrote, quoting from *Fort v. Civil Service Commission*, 61 Cal.2d 331, 392 P.2d 385 (1964), where the Court announced:

> [A] governmental agency which would require a waiver of constitutional rights as a condition of public employment must demonstrate: (1) that the political restraints rationally relate to the enhancement of the public service, (2) that the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights, and (3) that no alternatives less subversive of constitutional rights are available. . . . Although an individual can claim no constitutional right to obtain public employment or to receive any other publicly conferred benefit, the government cannot condition admission to such employment or receipt of such benefits upon any terms that it may choose to impose. . . . Today courts and commentators alike recognize without question that the power of government, federal or state, to withhold benefits from its citizens does not encompass a supposed 'lesser' power to grant such benefits upon an arbitrary deprivation of constitutional right.

After having recited the above authorities, the Chancellor properly announced the criteria which the government must meet when it seeks to limit the basic guarantees in the field of public employment:

> Although public employees may be subjected to certain regulatory requirements affecting these First Amendment freedoms, rigorous standards of judicial review are applied to such regulations to prevent them from falling easy prey to the chilling effects of unbridled regulation. Some statutes and regulations must firstly be found to serve a compelling state interest, and secondly must be drawn as narrowly as possible, making the effect of the statute the least burdensome alternative available. *Keyishian v. Board of Regents,* 385 U.S. 589 (1967), 87 S. Ct. 674; *Slochower v. Board of Education,* 350 U.S. 551 (1958), 76 S. Ct. 637; *Pickering v. Board of Education,* 391 U.S. 563 (1968), 88 S. Ct. 1731; *Wieman v. Updegraff, supra,* at 183.

The importance of the second aspect of this test may not be overemphasized. In *Shelton v. Tucker, supra,* the Supreme Court rendered a decision which clearly recognized the legitimate governmental interest in regulating teachers in the State of Arkansas, but invalidated the law because it was too broad. Mr. Justice Stewart writes in the Court's majority opinion:

> ". . . even though a government purpose may be legitimate and substantial, that purpose may not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of

> less drastic means for achieving the same purpose." *Id.*, at S. Ct. 252.

Following the delineation of these principles of constitutional law, the Chancellor applied them to the provisions of Chapter 20A:

> Government employees have certain rights concerning their employment. The new requirement that nonelected officials disclose their finances may, as alleged, drive some of them from their jobs. This constitutes a form of involuntary discharge, or constructive discharge without due process of law. The employees involved in this litigation have certain rights flowing from their public employment. They also have rights as citizens which they need not give up by the mere fact that they take public employment and one of these fundamental rights is privacy. In the following context the privacy right includes the individual employee's right as well as those of his or her spouse and dependents. 'The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the "liberty" and "property" concepts of provisions of Fifth Amendment to Federal Constitution that no person shall be denied liberty or property without due process of law.' *United States v. Robel,* 389 U.S. 256 at 258. Furthermore, a law which causes one spouse to disclose the finances of the other can have a serious impact on a marital relationship and may, therefore, interfere with the family relations.

As early as 1891 the Supreme Court states:

> No right is more sacred, [n]or is more carefully guarded . . . than the right of every individual to the possess and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law. As well said by Judge Cooley, "The right to one's person may be said to be a right of complete immunity: to be let alone." *Union Pac. Ry. v. Botsford*, 141 U.S. 250, 251 (1891), quoted in *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968).

Walsh et al. v. Montgomery County, et al., E. 49873 (Circuit Court, October 10, 1974) p. 24-25.

The Court of Appeals refused to hold that Chapter 20A violated any federal right of the Appellants to hold public employment. Although the trial court dealt comprehensively with this issue, the Appellate Court dismissed Appellants' arguments in a brief discussion that opined that there had not been any impermissible infringement upon any constitutional rights of the complaining employees.

The issue as to whether Chapter 20A violates the Appellants' rights to hold their positions presents a substantial federal question to this Court.

III. CHAPTER 20A IS SO UNCERTAIN, INDEFINITE, CONTRADICTORY, VAGUE, AMBIGUOUS AND LACKING IN REASONABLE STANDARDS AND GUIDELINES SO AS TO INFRINGE UPON THE APPELLANTS' RIGHTS OF DUE PROCESS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A law is void if its prohibitions and restrictions are not clearly defined. As this Court stated in *Cramp v. Board of Public Instruction*, 368 U.S. 278 at 287:

> We think this case demonstrably falls into the compass of those decisions of this Court which hold that ". . . a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127.

In *Cramp*, this Court emphasizes that stricter standards of vagueness must be applied in cases which inhibit the exercise of constitutionally protected individual freedoms:

> The vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of individual freedoms affirmatively protected by the Constitution. As we said in *Smith v. People of State of California*, ". . . stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech, a man may be the less required to act at his peril here, because the free dissemination of ideas may be the loser." 361 U.S. 147, at 151, 80 S. Ct. 215, 217, 4 L.Ed. 2d 205. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit

the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment." *Stromberg v. People of State of California*, 283 U.S. 359, 369, 51 S. Ct. 532, 537, 75 L.Ed. 1117. See also *Herndon v. Lowry*, 301 U.S. 272, 57 S. Ct. 732, 81 L.Ed. 1966; *Thornhill v. State of Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1003; *Winters v. People of State of New York*, 333 U.S. 507, 68 S. Ct. 665, 92 L.Ed. 840.

As in *Weiman v. Updegraff*, we are not concerned here with the question "whether an abstract right to public employment exists." 344 U.S. 183, at 1972, 73 S. Ct. 215, at 219, 97 L. Ed. 216. Nor do we question the power of a State to safeguard the public service from disloyalty. Cf. *Slochower v. Board of Education*, 350 U.S. 551, 76 S. Ct. 637, 100 L.Ed. 992; *Adler v. Board of Education*, 342 U.S. 485, 72 S. Ct. 380. It is enough for the present case to reaffirm "that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Weiman v. Updegraff, supra*, 344 U.S. at 1972, 73 S. Ct. at 219. "The fact . . . that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution." *Torcaso v. Watkins*, 376 U.S. 488, at 495-496, 81 S. Ct. 1680, at 1684, 6 L.Ed. 2d 982. (*Cramp, supra*, at 287-288.)

At the trial below and on appeal, the Board of Education of Montgomery County, in its *amicus* brief asserted that the vagueness of Chapter 20A perplexed the Board because the Act cannot be understood with certainty.[3] Likewise the *amicus* of the Board of Trustees of Montgomery Community College was also concerned with the language. Both governmental agencies urged that Chapter 20A be struck down for numerous reasons, including its vagueness.

The Chancellor held that "Chapter 20A is replete with phrases and words that have no common meaning to men of reason." As an example, he discussed Section 20A-3 (b)(11). That section requires sworn statements filed by:

> Except as hereinafter provided, all employees of the County who are responsible for making governmental decisions or taking governmental action or recommending any such decision or action with with regard to:
>
> (a) Contracting or procurement;
>
> (b) Administering or monitoring grants or subsidies;
>
> (c) Planning or zoning;
>
> (d) Inspecting, licensing, regulating or auditing any non-governmental enterprise; and
>
> (e) Other activities where the decision or action has an economic impact on the interests of any non-governmental enterprise.

[3] It is somewhat anamolous that the taxpayers are employing legal counsel to both defend the provisions of Chapter 20A and attack its constitutionality.

This subsection purports to tell employees who must file financial disclosure statements. It is not susceptible to reasonable interpretation. Is a secretary who recommends to her boss that he purchase a specific type of eraser covered? Is a clerk who receives permits from citizens and who advises his superior of a more efficient manner of doing his job covered? The person who colors the zoning map, is he covered? If an employee runs out of gasoline and purchases some from a commercial station is he covered? These questions are respectfully put to this Court because these are the kinds of questions that County employees have when they read the provisions of Chapter 20A. Clearly, the County Council could have more precisely defined the class of persons covered under this bill. It is not a question of legislative prerogative; rather, it is a direct infringement of constitutional rights. The defects found in the provisions of the above section are compounded by the language of Section 20A-3(d) which purports to grant authority for an exception for certain employees. However, the exemption is illusory because the language does not state "who" has the authority to determine whether an exemption shall apply! This gaping deficiency properly troubled the trial court, as did other sections, such as 20A-7, 20A-8(e) and (f) and 20A-10.

The Court of Appeals of Maryland found no unconstitutional vagueness in Chapter 20A and commented that persons in doubt as to the application of the Chapter could seek an opinion from the County Attorney. In so holding that Court failed to recognize the principles pointed out by this Court in *Grayned v. City of Rockford*, 408 U.S. 104, 108-109:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second if arbitrary and discriminary enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone" . . . than if the boundaries of the forbidden area were clearly marked.

Chapter 20A's vagueness presents a substantial federal question.

IV. CHAPTER 20A VIOLATES THE EQUAL PROTECTION GUARANTEE OF THE FOURTEENTH AMENDMENT BECAUSE IT REQUIRES THAT THE FINANCIAL STATEMENTS OF CERTAIN EMPLOYEES BE MADE PUBLIC WHILE ALLOWING OTHERS TO REMAIN CONFIDENTIAL.

The provisions of Chapter 20A-4(f), (g), and (h) create an arbitrary, unreasonable and unlawful classification in violation of the due process and equal protection provisions of the Federal Constitution by requiring the public availability of the statements of certain individuals, including some of the Appellants, while allowing the statements of other employees to be withheld from the public by a "confidential filing." Further, Chapter 20A-3(b)(10) creates an arbitrary, unreasonable and unlawful classification violative of equal protection by excluding from application of Chapter 20A paid members of boards, commissions, and committees of the County government appointed prior to the effective date of this law when no such similar exclusion is provided for other "employees" or officials of the County.

In *McGowan v. Maryland,* 366 U.S. 420, 425 (1961), this Court held that the equal protection safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. The trial court held that there was no rational basis for the discriminatory, unequal and most arbitrary treatment of some employees who had a right to be grouped with other employees, and not with public officials. The Maryland Appellate Court disagreed. In doing so it failed to heed the principles of *Williams v. Rhodes,* 393 U.S. 23 (1968), and *Jenness v. Forston,* 403 U.S. 431, 442 (1971): "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. . . ."

Elected officials are chosen directly by the electorate which has a substantial right to have full information regarding the selection of their officials. The same substantial right does not exist which compels revelation of some merit system employees' financial affairs, and not those of other such employees.

Almost a century ago, this Court made it clear that a law "applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights [constitutes] the denial of equal justice . . ." *Yick Wo v. Hopkins,* 118 U.S. 356, 373-74 (1886). Chapter 20A is such a law and presents a substantial question of denial of equal protection of this Court.

For the reasons set forth above, Appellants submit that the Court of Appeals of Maryland erroneously decided numerous questions which are federal and substantial in nature and of public importance.

Respectfully submitted,

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July 14, 1975

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

No. 201

September Term, 1974

MONTGOMERY COUNTY, MARYLAND et al.

v.

JOHN B. WALSH, JR., et al.

Murphy, C.J.
Singley
Smith
Digges
Levine
O'Donnell
Gilbert, Richard P.
(specially assigned),
JJ.

Opinion by Murphy, C.J.

Filed: April 14, 1975

The Montgomery County Financial Disclosure Ordinance (the County Ordinance), codified as Chapter 20A of the Montgomery County Code (1974), requiring designated elected and appointed officials and employees of the County to disclose certain of their financial interests, was declared "unconstitutional, null and void in its entirety" by the Circuit Court for Montgomery County (Moorman, J.) on October 10, 1974. The court found that the Ordinance was in conflict with a public general law of the State and as such was void; that it violated the constitutional right of privacy of County employees, their spouses

and children; that it violated the constitutional right of County employees to hold public employment; that the Ordinance was so vague and indefinite that it violated the due process provisions of the federal and state constitutions; that it denied certain employees the equal protection of the law; and that it violated other constitutional provisions and was in conflict with the Montgomery County Charter and the Code of Professional Responsibility. We granted certiorari prior to decision by the Court of Special Appeals on the appeal taken to that court by the County so that we could promptly consider the significant public issues presented in the case. *See* Maryland Code (1974) Courts and Judicial Proceedings Article, § 12-201.

The seeds of this controversy are found in the 1973 enactment of a public general law by the General Assembly of Maryland requiring certain elected and appointed officials within the State government, and candidates for such elective offices, to file statements with the Secretary of State publicly disclosing designated financial interests held by them.[1] That Act (Chap. 3, 1st Sp. Sess. of 1973), now codified as Code (1971 Repl. Vol., 1974 Cum. Supp.) Art. 33, §§ 29-1 through 29-11 (the State Act), contains a legislative declaration in § 29-1 "that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officers . . . that the people have a right to be assured that the financial

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[1] The elected offices are: Governor, Lieutenant Governor, Attorney General, State Comptroller, State Senator, State Delegate, State's Attorney, Clerk of the Circuit Court, Register of Wills and Sheriff. The appointed officials are: Deputy Attorney General, Deputy State Comptroller, State Treasurer and Deputy Treasurer, Secretary of State and Secretary and Deputy Secretary of a principal Executive Department of State government.

interests of holders of and candidates for public office present no conflict with the public trust . . . [and that] the purpose of this act [is] to promote the continued trust and confidence of the people of the State of Maryland in the integrity of their public officers."

The State Act requires in § 29-5 that the declarant annually disclose his interests in real property; interests in all corporations; interests in other entities doing business with the State; the receipt of certain gifts; a schedule of all offices, directorships and salaried employment with corporations or other entities doing business with the State; a schedule of all liabilities (other than retail credit accounts) owing to persons doing business with the State, including liabilities incurred by the declarant's spouse or children if he was involved in the transaction giving rise to the liability; and a list of all members of the declarant's immediate family who were employed by the State in any capacity. The term "interest" is broadly defined in § 29-2(a) of the State Act to embrace any legal or equitable interest owned or held by the declarant, in whole or in part, jointly or severally, directly or indirectly, at any time during the reporting period; it does not include, however, an interest in a time or demand deposit in a financial institution. Nor does it include an interest in an insurance or endowment policy or a fixed dollar annuity contract. The phrase "[b]usiness with the State" is defined in § 29-2(d) to mean "any one or any combination of sales, purchases, leases or contracts to, from, or with the State, or any agency thereof, involving consideration of . . . $10,000 or more on a cumulative basis during . . . [the reporting period]." Section 29-6 provides that with respect to interests in real property and corporations and in other entities doing business with the State, any interest held by the spouse or children of the declarant shall be considered

his interest if directly or indirectly controlled by him. Section 29-6(b) provides, in effect, that the declarant must disclose an interst in a business entity only if he holds a 30% or greater interest in it. Section 29-10 provides that each county of the State, the City of Baltimore and each incorporated municipality

> "[is] hereby directed to enact public financial disclosure requirements with respect to any local officials of their respective jurisdictions, including candidates for election to such offices, the standards and requirements of which must be susbtantially those required by this subtitle for State officials and candidates . . . ."

Section 29-11 authorizes the Governor, by Executive Order, to require persons holding "State positions compensated in whole or in part by public funds and noncompensated gubernatorial appointees" to disclose annually, as public records, "such relevant information concerning their financial affairs as he may deem necessary to promote the continued trust and confidence of the people in the executive branch of the State government."

By Executive Order dated April 1, 1974, the Governor promulgated an extensive schedule of nonelective "offices and positions" in the State government and required that persons occuyping such offices and positions make the same public financial disclosure as that mandated by the provisions of the State Act.

The Montgomery County Financial Disclosure Ordinance was enacted by the County Council on June 18, 1974 and became effective on June 28, 1974. It recited in § 20A-1 that it was the purpose of the Ordinance "to implement at the local level the provisions of Chapter 3 of the 1973

Acts of the General Assembly and to promote the continued trust and confidence of the citizens of Montgomery County in the integrity of their public officers." Section 20A-3 of the Ordinance requires persons holding, and candidates for the elective offices of County Executive, County Surveyor and members of the County Council and County Board of Education, and persons holding or appointed to other designated "offices and positions" in the County, to annually make a public disclosure of their financial interests, and those of their spouses and dependent children, in accordance with the dictates of § 20A-5. That section requires that the declarant disclose, for the reporting period, interests in real property; interests in any business entity or profession; "all other assets of every nature whatsoever in excess of $1000 each not otherwise reported"; all income received by the declarant and its source, together with a statement of the gross income of the declarant's spouse and dependent children, "including the source of any portion of such income which may reasonably be expected to have a direct or indirect effect on the activities with the County of the . . . [declarant]"; a schedule of certain gifts received; a schedule of all offices and directorships held in any corporation or other business entity and the amount of compensation received therefrom: a schedule of all liabilties (other than retail accounts) in excess of $1,000 owing to any person doing business with the County or who is regulated, inspected or licensed by the County, including such liabilities incurred by the declarant's spouse or children if the declarant was involved in the transaction giving rise to the liability; and a list of all members of the declarant's immediate family employed in any capacity by that County. Section 20A-6 provides that with respect to interests in real property and in any business entity or profession, any interest held by the declarant's spouse, father, mother, brother, sister or child

shall be considered his interest if directly or indirectly controlled by him at any time during the reporting period. Section 20A-6(b) provides, in effect, that the declarant must disclose any interest in a business entity in which he held a 30% or greater equity interest during the reporting period. "Interest" is defined in § 20A-2(a) of the Ordinance in terms similar to those contained in the State Act, except that it includes an interest of over $1,000 in a time or demand deposit in a financial institution; it also includes an interest in an insurance or endowment policy of fixed dollar annuity contract.

In addition to persons required by § 20A-3 to disclose their financial interests, § 20A-3(c) makes provision for the filing of financial disclosure statement by "[a]ny other official, employee or appointee" of the County where it is determined by designated authority that it is "desirable to promote the trust and confidence of the citizens of the County . . . ." Financial disclosure statements filed under this subsection need not be made public. § 20A-4(f). Provision is also made in § 20A-3(d) of the Ordinance for excusing certain employees, otherwise subject to the filing requirements, from filing disclosure statements where "it is determined [by the appointing authority] that the duties of the position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote or if the duties of the position are at such a level of responsibility that the submission of such sworn [disclosure] statement is not necessary because of the degree of supervision and review over the incumbent."

The County Attorney is required by the Ordinance to render advisory opinions "with respect to any matter . . . concerning the applicability" of the law, to investigate and process complaints of alleged violations and, in the event of a failure to comply, to seek from the circuit

court a writ of mandamus ordering the violator "to take such actions as will cure the violation." §§ 20A-7 and 20A-8. Upon issuance of a writ of mandamus, the County Director of Finance or other payroll disbursing officer is directed to suspend the violator's salary, pending full compliance with the Ordinance.

On July 29, 1974, a Bill of Complaint for Declaratory Judgment and Injunctive Relief was filed against the County and various of its officials by seventeen County employees who were required to file the financial dislcosure statements mandated by the Ordinance; they were joined in the suit by the spouses of two of the complaining employees. The bill alleged in forty-five particulars that the Ordinance was unconstitutional and void on its face because it conflicted with, or was violative of, numerous provisions of the Federal and State Constitutions, the Maryland Declaration of Rights, ahe Montgomery County Charter, and specified public general laws of the State. No evidence was introduced and both parties moved for summary judgment. On October 10, 1974, the court declared the Ordinance unconstitutional and null and void in its entirety and granted summary judgment acocordingly.

(1)

Conflict between the Ordinance and the State Act.

The lower court concluded that the Ordinance conflicted with § 29-10 of the State Act because it does not contain, as mandated by that section, "standards and requirements" which are "substantially those required [by the State Act] for State officials and candidates." The court held that under the purpose clause of the State Act, disclosure requirements are imposed only upon "public officers" or "public officials," and that the provisions of the Ordinance, expressly enacted to implement the State Act, cannot lawfully be

applied to persons like the complaining County employees who do not hold any "office." Additionally, the court said:

> ". . . the State law is more limited in scope than Chapter 20A. Its coverage is more restrictive and its requirements concerning disclosure are fewer. The Court therefore finds that Chapter 20A is invalid and void because it does not set forth standards and requirements which are 'substantially' those required by the State law."

Section 29-10 of the State Act, as originally proposed, merely "empowered" counties to enact public financial disclosure requirements; as finally enacted, § 29-10 "hereby directed" the counties to "enact public financial disclosure requirements . . . the standards and requirements of which must be substantially those required by . . . [the State Act]." That section also provides that "the express powers contained and enumerated in Articles 23A, 25A and 25B of the . . . [Maryland] Code . . . are intended and shall be deemed to incorporate and include the power and authority contained in this section."

Nothing in the State Act compels the conclusion that it was intended to be limited in application to persons who, in a strict legal sense, hold "public office"; indeed, § 29-11 expressly provides to the contrary and indicates a legislative intention to cover a broad range of governmental officials and employees who exercise significant governmental authority, whether they be elected or appointed. *See* 58 Op. Atty'sGen. 343 (1973). We think the provisions of § 29-10 plainly constitute a legislative mandate that the counties shall enact public disclosure laws which, at a minimum, contain standards and requirements substantially like those imposed by the State

Act.[2] Persons other than public officers and officials are covered under both the State Act and the Ordinance, and although there are some differences in the quantum and manner of disclosure required by the two laws, *we think* the Ordinance does contain public financial disclosure standards and requirements which, in the sense contemplated by the legislature, are "substantially" those required by the State Act for State officials and candidates. Accordingly, we hold that the lower court erred in finding that the Ordinance was void because it was in conflict with the State Act. *See County Council for Montgomery County v. Montgomery Association, Inc.,* Md. , A.2d (1975) [No. 139, September Term, 1974, decided February 24, 1975].

(2)

The Constitutional Right to Privacy.

The lower court found that the Ordinance "unduly intrudes into the rights of privacy of County employees, their spouses and children, by requiring the disclosure of relevant and irrelevant private financial affairs and is not limited to only such disclosure regarding holdings as might be affected by duties of a particular public office or employment." The court said:

> "The financial disclosure requirements of Chapter 20A before this Court encompass indiscriminately persons holding employment for Montgomery County and its offices, agencies and departments, regardless of the nature or scope of activity of such offices, agencies, and departments.

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[2] The Attorney General has ruled, we think erroneously, that the provisions of § 29-10 are merely directory. *See* 59 Op. Att'y Gen. 74-2 (1974).

> The defendant County Council made no effort to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; that is, to such dealings which might have some rational connection with or bearing upon, or which might be affected by, the functions, duties, responsibilities or jurisdictions of any particular employee."

Finding that the restrictions in the Ordinance were broader than those reasonably required to effectuate its purpose, the court held that it violated the 1st, 4th, 9th and 14th amendments to the federal constitution and Articles 2, 7, 8, 19, 23, 35, 40, and 45 of the Maryland Declaration of Rights. In so concluding, the court relied upon Supreme Court cases recognizing a constitutional right of privacy, *Roe v. Wade,* 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *Griswold v. Connecticut,* 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965), the decision of the Supreme Court of California in *City of Carmel-by-the-Sea v. Young,* 2 Cal.3d 259, 85 Cal. Rptr. 1, 466 P.2d 225 (1970), and Maryland cases recognizing invasion of privacy as a tort, *Beane v. McMullen,* 265 Md. 585, 291 A.2d 37 (1972); *Carr v. Watkins,* 227 Md. 578, 177 A.2d 841 (1962). To override an infringement of this right of privacy, the court said that the County had to demonstrate a compelling interest, show that its financial disclosure Ordinance was "necessary and not merely rationally related to, the accomplishment of permissible [County] policy," and prove that this policy could not be achieved by alternative and narrower means. *See Shelton v. Tucker,* 364 U.S. 479, 81 St. Ct. 247, 5 L. Ed. 2d 231 (1960). After examining various provisions of the Ordinance, the court, relying primarily on the latter ground, struck down the Ordinance as violative of the constitutional right of

privacy.[3]

It is, of course, no longer open to question that the right of privacy is protected by the federal constitution and that where the right is applicable, regulation limiting it must be justified by a "compelling state interest." *Doe v. Commander,* 273 Md. 262, 329 A.2d 35 (1974). The Supreme Court emphasized in *Roe v. Wade, supra,* 410 U.S. at 152, however, that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty" are included in the constitutional guarantee of personal privacy. Stated another way, "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird,* 405 U.S. 438, 453, 92 St. Ct. 1029, 1038, 31 L. Ed. 2d 349, 362 (1972). If these pronouncements hint that the constitutional right of privacy is of limited scope and not to be lightly applied, *Paris Adult Theatre I v. Slaton,* 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973), makes it explicity. In that case, the Court referred

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[3] Among the suggestions made by the court to narrow the statute were: (1) relate employee coverage to the nature or scope of activity of County offices, agencies and departments; (2) relate disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; (3) do not require disclosure of the financial interest of spouse and children; (4) limit real property interests required to be disclosed to a narrower geographic area; (5) do not require disclosure of all interests in business entities or professions; (6) confine income disclosure to its source and not to amounts; (7) limit reporting of gifts or interest in offices and directorships to the official, not his family; (8) do not require a list of family members employed by the County; (9) require only present liabilities and not any liability for any period of time during the period covered by the statement; and (10) limit the provision providing for public disclosure of financial statements.

to the right of privacy, as developed in *Griswold* and *Wade*, as the "right to intimacy" and said that "[t]his privacy right encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing." 413 U.S. at 65-66. It is thus clear that the Supreme Court has yet to extend the right to privacy much beyond the context of intimate relationships. It is not, therefore, coextensive with every intrusion actionable under the tort of invasion of privacy, nor does it protect rights merely "important" and not "fundamental." *Cf. San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973). That protecting the confidentiality of individual financial matters is important cannot be doubted; that it is a "fundamental" right "implicit in the concept of ordered liberty" is anything but certain. Thus, in *Illinois State Employees Association v. Walker*, 57 Ill.2d 512, 315 N.E.2d 9 (1974), *cert. den. sub. nom., Troopers Lodge No. 41 v. Walker*, U.S. , 95 S. Ct. at 642, 42 L. Ed. 2d 656 (1974), a case involving the constitutionality of financial disclosure requirements in Illinois, the Supreme Court of that state rejected the contention that employees' rights to privacy were implicated, saying:

> "They [the employees] argue: "If, in *Griswold*, the State could not invade the zone of privacy that a married couple may enjoy on top of the mattress, we might well question what right the State has to invade the zone of privacy that a married couple might enjoy in what they have tucked inside the mattress.' In our opinion this argument debases the *Griswold* opinion, and we find it completely unacceptable. We do not deal in this case with the most intimate relationships

> of husband and wife or with an effort by the State to control their decisions as to whether and when to have their children. We deal rather with a requirement that the financial affairs of persons who are paid by the public and who occupy positions of high public trust be disclosed." 315 N.E.2d at 16.[4]

But even if an individual had legitimate expectations of privacy of his personal finances, *California Bankers Association v. Schultz*, 416 U.S. 21, 94 S. Ct. 1494, 39 L. Ed. 2d 812 (1974) (concurring opinion of Justices Powell and Blackmun), we think the County Ordinance facially demonstrates a compelling interest necessary to the accomplishment of County policy to which is subordinated any resulting infringement on the right of privacy. The State Act and Ordinance have a common purpose – to assure that citizens maintain the highest trust and confidence in their public officials. These laws are concerned not just with actual conflicts of financial interest, but also with appearances.[5] More than a mere collection of prohibitions

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[4] The lower court attempted to distinguish *Walker*, which involved an executive order requiring more detailed disclosure than the Ordinance, on the basis of an Illinois constitutional provision sanctioning financial disclosure. But such a distinction is without a federal constitutional difference. *See* Reitman v. Mulkey, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).

[5] In United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973), the Supreme Court said:

> ". . . it is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disasterous extent."
> 413 U.S. at 565.

aimed solely at public officials, such legislation seeks to foster a climate of honesty perceptible by the public at large. It can hardly be denied that the County has a compelling interest, on behalf of its citizens. in ensuring that its public officials and employees act with honesty, integrity, and impartiality in all their dealings, and that their private financial holdings and transactions present no conflict of interest between the public trust and private interests. For these reasons, it is readily apparent, as stated by Mr. Justice Douglas, who authored *Griswold* for the Court, that the County has "an undeniably strong interest in placing beyond question the integrity of its public service." *Troopers Lodge No. 41 v. Walker, supra,* 95 S. Ct. at 643 (concurring in denial of certiorari).

In the first of five decided cases dealing with the constitutionality of public financial disclosure laws, the court in *City of Carmel-by-the-Sea v. Young, supra,* struck down a statute on the ground that it constituted an overbroad intrusion into the private financial affairs of persons seeking to hold, or holding, public office. The court's major objection to the statute was that "[n]o effort is made to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest." 466 P.2d at 232. The court noted, however, that the legislature, in a properly drawn statute, could constitutionally require "a broad disclosure of assets, income or receipts relevant to the duties and functions of a public officer or employee." 466 P.2d at 234.

In *Stein v. Howlett,* 52 Ill.2d 570, 289 N.E.2d 409 (1972), *appeal dismissed,* 412 U.S. 925, 93 S. Ct. 2750, 37 L. Ed. 2d 152 (1973), it was held that a statute requiring public officials to publicly disclose various business connections and interests was not overbroad as an

unconstitutional invasion of privacy; the court there found that the statute promoted a compelling governmental interest which was paramount to the rights of the individual. In *Fritz v. Gorton,* 83 Wash.2d 275, 517 P.2d 911, *appeal dismissed,* 417 U.S. 902, 94 S. Ct. 2596, 41 L. Ed. 2d 208 (1974), a statute requiring detailed public disclosure of the financial affairs of elected officials was found to promote a compelling state interest and not constitute an unwarranted intrusion into the privacy of candidates or or public officeholders. The court there noted:

> ". . . The right of the electorate to know most certainly is no less fundamental than the right of privacy. When the right of the people to be informed does not intrude upon intimate personal matters which are unrelated to fitness for public office . . . [citing *Griswold v. Connecticut, supra*], the candidate or office holder may not complain that his own privacy is paramount to the interests of the people."
> 517 P.2d at 925.

In *Illinois State Employees Association v. Walker, supra,* no constitutional deprivation of the right of privacy was found to exist by reason of a governor's executive order compelling designated state employees to make a detailed financial disclosure, which included filing their income tax returns with their disclosure statements.

In *County of Nevada v. MacMillen,* 11 Cal.3d 673, 114 Cal. Rptr. 345, 552 P.2d 1345 (1974), the Supreme Court of California, revisitng the ground it had originally tested in *City of Carmel,* was called upon to review a new conflict of interest and financial disclosure law covering both elected and appointed officials and requiring detailed dis-

closure of many financial interests. The court found that the new law "seems specially tailored to meet and satisfy the primary concerns of our *Carmel* ruling"; that it "appears to accomplish its legitimate aims in a less intrusive, and considerably more limited, fashion"; and that it "contains sufficient assurance [on its face] that unnecessary intrusions into personal privacy will not occur." 114 Cal. Rptr. at 349-50. Citing *Fritz* and *Stein*, the court said: "These cases support our view that neither the right to privacy, nor the right to seek and hold public office, must inevitably prevail over the right of the public to an honest and impartial government." 114 Cal. Rptr. at 351.

While the facts and regulatory schemes involved in each of these cases differed among themselves, and also differ from those in the Ordinance now before us, our review of the purpose and provisions of the Ordinance, in light of the cases, convinces us that the constitutional right of privacy here asserted is without application in the circumstances of this case. We think it plain that to limit disclosure requirements to financial information that on its face relates to County activities or to the functions and duties of a particular official or employee would not guarantee the absence of financial conflicts of interest. In this connection, we note what the court in *Stein v. Howlett, supra*, said:

> "[T]he plaintiff questions how the disclosure of a business connection, unrelated to any activity of the State serves to avoid the conflicts of interest hoped to be disclosed and obviated by the statute. We acknowledge that the disclosure of a business connection which is truly unrelated to any State activity cannot hope to achieve the desired purpose. But who is to say

> whether or not there is a business connection or relation with the State? Who is to say that the business within the State which does not do business directly with the State, but which supplies another company which does, has no connection with the State? Who is to say that a capital gain from the sale of an asset to a stockholder of a company doing business with the State has no connection with the position of the public official?"
> 289 N.E.2d at 413.

In a similar vein, the court in *Fritz v. Gorton, supra*, said:

> "It would be, however, an insurmountable legislative task to tailor disclosures to each of literally a myriad of public posts, and an anomaly to require each individual to make a personal determination as to what items of his financial affairs would be relevant."
> 517 P.2d at 926.

That the Ordinance compels a degree of disclosure by spouses and children of the official or employee does not mean that the law is fatally overbroad. Similar disclosures were involved in *Stein*, *Fritz*, and *Walker*. As the court in *County of Nevada v. MacMillen, supra*, observed:

> "Although the 1973 act may to some extent invade the privacy of the official's spouse or dependent children, we think the public's interest in an honest and impartial government outweighs the interests of such persons in maintaining complete privacy in their financial affairs."
> 114 Cal. Rptr. at 353 n. 10.

With regard to disclosure by spouses and children, the County makes this forceful observation:

"The requirement is neither novel nor unreasonable. Men have been known to conceal their assets by placing title thereto in the name of their wives, sons, or brothers; and it is merely common sense to realize that an official may act to enhance the financial interests of his family members, even if he exercises no direct control over them. Excluding such interests from disclosure, then, would not ensure the official's integrity and impartiality or the public's confidence therein. One does not have to assume – as the trial court suggested that the framers of Chapter 20A did – that all county employees and their spouses and children 'are crooks,' in order to find a rational connection between the requirement for disclosure of family members' assets and income and assuring the public that an employee is free from potential conflicts of interest in the performance of his duties."

We conclude that the disclosure provisions of the Ordinance, although broad, are drawn to achieve a legitimate objective and do not sweep unnecessarily broadly into the area of protected freedom. In a case involving a statute prohibiting state employees from seeking political office or taking part in the affairs of a political party or in a political campaign, the Supreme Court responded to a claim that the provisions were overbroad by stating'

> "[P]articularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep. It is our view that . . . [the statute] is not substantially overbroad and that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not applied." *Broadrick v. Oklahoma*, 413 U.S. 601, 615-16, 93 S. Ct. 2908, 2918, 37 L. Ed. 2d 830, 842 (1973).

In holding that the provisions of the Ordinance do not go beyond what may properly be deemed necessary to achieve the County's goal, we point out that the wisdom of imposing such financial disclosure requirements is a matter for legislative, not judicial, judgment. "To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, – illogical, it may be, and unscientific." *Metropolis Theatre Co. v. City of Chicago*, 228 U.S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730, 734 (1913). In other words, if legislation is constitutional, the wisdom of it is beyond the purview of the courts. *In re Trader*, 272 Md. 364, 325 A.2d 398 (1974).

(3)

The Constitutional Right to Hold Public Employment.

In holding that the Ordinance invaded the rights of County employees to hold their employment in violation of the 1st, 4th, 5th, 9th and 14th amendments to the federal constitution and Articles 2, 7, 8, 19, 23, 35, 40 and 45 of the Maryland Declaration of Rights, the lower court relied upon a number of cases holding that a public employee cannot be removed from his employment for reasons that contravene due process (*e.g., Cramp v. Board of Public Instruction,*

368 U.S. 278, 82 S. Ct. 275, 7 L. Ed. 2d 285 (1961). From averments made in the bill of complaint that the Ordinance may drive some employees from their jobs, the court concluded that forced financial disclosure "constitutes a form of involuntary discharge, or constructive discharge without due process of law."

While it is true that government employment may not be denied on the basis of invidiously discriminatory criteria, *Sugarman v. Dougall*, 413 U.S. 634, 93 S. Ct. 2842, 37 L. Ed. 2d 853 (1973); that government employees retain their first amendment rights to speech and assembly, *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct., 1731, 20 L. Ed. 2d 811 (1968); and that public employees may not, in some instances, be deprived of their employment without procedural due process, *Perry v. Sindermann*, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570 (1972), there is no constitutional right to public employment as such which will be protected against infringement on its own account apart from violation of other constitutional rights. Nothing in the provisions of the Ordinance now before us prohibits persons from holding public employment. If a County employee fails to comply with the disclosure provisions of the Ordinance, and if the County Attorney thereby takes action against him, and if a court issues the appropriate writ, the employee's salary will be suspended pending compliance with the requirements imposed by the Ordinance, and he may be subjected to existing personnel disciplinary rules. That an employee may choose to resign rather than make a public disclosure of his finances does not mean that he is being unconstitutionally excluded from public employment. Where, as here, the Ordinance promotes a compelling state interest, and is not substantially overbroad, no unconstitutional or impermissible infringement upon any constitutional right

of the complaining employees is involved. The cases so hold. *See Fritz v. Gorton, supra; Stein v. Howlett, supra; County of Nevada v. MacMillen, supra. Compare Broadrick v. Oklahoma, supra* and *United States Civil Service Commission v. National Association of Letter Carriers, supra.*

(4)

Due Process of Law – The Void for Vagueness Doctrine.

The lower court found that the Ordinance was "replete with phrases and words that have no common meaning to men of reason" and that it was therefore "so vague and indefinite that it is a violation of the due process provisions of the Federal and State Constitutions." It held that "[t]his unconstitutional vagueness is so pervasive that the severability [clause] in Section 11 of [Chapter] 20A cannot save the Act." In so concluding, the lower court focused on four specific provisions of the Ordinance:

> (1) § 20A-3(b)(11) requiring that financial disclosure statements be filed by County employees in decision-making jobs;[6]

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[6] This section, with certain exceptions, requires that statements be filed by:

> ". . . all employees of the County who are responsible for making governmental decisions or taking governmental action or recommending any such decision or action with regard to:
>
> (a) Contracting or procurement;
> (b) Administering or monitoring grants or subsidies;
> (c) Planning or zoning;

(continued)

(2) § 20A-3(d) exempting certain officials within a designated class from disclosure, but not specifically setting out who will grant the exemption;

(3) §20A-5 requiring a valuation to be placed on real and personal property without specifying the method of valuation, *e.g.*, market value, purchase price, etc.;

(4) §§ 20A-1 and 20A-10 requiring "public officials" to file financial statements, without defining that term.

It is true, of course, that a statute which requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process. *Connally v. General Construction Co.*, 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1926). Recognizing that "there are limitations in the English language with respect to being both specific and manageably brief" and that statutory language "may not satisfy those intent on finding fault at any cost," the Supreme Court recently restated the standard for vagueness by saying: the statute must be "set out in terms the ordinary person exercising ordinary common sense can sufficiently understand and

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6 (continued)

(d) Inspecting, licensing, regulating or auditing any non-governmental enterprise; and

(e) Other activities where the decision or action has an economic impact on the interests of any non-governmental enterprise."

comply with, without sacrifice to the public interest." *United States Civil Service Commission v. National Association of Letter Carriers, supra,* 413 U.S. at 578-79.

Measured by these tests, we think the lower court was plainly wrong in holding that the Ordinance was void for vagueness. The Ordinance makes provision for a procedure whereby persons in doubt about its application in particular situations may obtain a ruling from the County Attorney, the officer primarily responsible for its enforcement. The County Attorney is required by the Ordinance to issue advisory opinions with respect to any matter involving its applicability, and he is responsible for determining exemptions under § 20A-3(d), and resolving uncertainties that might arise under § 20A-3(b)(11).[7] As to the valuation provisions of § 20A-5, the County Executive is authorized to adopt rules and regulations to implement the Ordinance; in the absence of such regulations, we think any reasonable good faith attempt at a fair market valuation will satisfy the plain intention of the County Council in enacting the Ordinance. We also think that the provisions of § 20A-3 sufficiently identify those persons required to file financial statements under the Ordinance and that no further definition of "local official" is required.

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7 In the *Letter Carriers* case, the Supreme Court rejected a vagueness contention aimed at the Hatch Act in part for the following reason:

> "It is also important in this respect that the Commission has established a procedure by which an employee in doubt about the validity of a proposed course of conduct may seek and obtain advice from the Commission and thereby remove any doubt there may be as to the meaning of the law, at least insofar as the Commission itself is concerned."
> 413 U.S. at 580.

(5)

Delegation of Legislative Powers

The lower court held that certain provisions of the Ordinance were unconstitutional since they constituted an unlawful delegation of legislative powers to administrative officers without proper guidelines and standards, viz.:

> (1) § 20A-3(c) which requires that financial disclosure statements be filed by officials designated by the County Executive or County Council "as might be desirable to promote the trust and confidence of the citizens of the County in the . . . County government":
>
> (2) § 20A-4(i) which directs the County's Chief Administrative Officer to provide forms for filing statements;
>
> (3) § 20A-8(e) which directs the County Director of Finance to "suspend payment of any salary or other compensation" to a person against whom the Circuit Court for Montgomery County issues a writ of mandamus to compel compliance with the Ordinance; and
>
> (4) § 20A-9 which delegates to the County Executive "the power to adopt reasonable and necessary rules and regulations for the implementation and administration of this Chapter."

We said in *Pressman v. Barnes*, 209 Md. 544, 555, 121 A.2d 816, 822 (1956):

> "Generally, a statute or ordinance vesting discretion in administrative officials without fixing any standards for their guidance is an

> unconstitutional delegation of legislative power. But we also hold, as a qualification of the general rule, that where the discretion to be exercised relates to police regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid. [citations omitted] It is recognized that it would not always be possible for Legislature or City Council to deal directly with the multitude of details in the complex situations upon which it operates. *Comptroller of Treasury v. M.E. Rockhill, Inc.*, 205 Md. 226, 232, 107 A.2d 93. The modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases."

To the same effect, *see County Council v. Investors Funding*, 270 Md. 403, 312 A.2d 225 (1973); *Davis v. Montgomery County*, 267 Md. 456, 298 A.2d 178 (1972); *Gino's v. Baltimore City*, 250 Md. 621, 244 A.2d 218 (1968); *Matthaei v. Housing Authority*, 177 Md. 506, 9 A.2d 835 (1939).

We think the powers delegated to County officials are well within the rule of the cases and accordingly we hold that the lower court erred in finding an unlawful delegation of legislative powers to County officials. *See* L. Cohen, *Some Aspects of Maryland Administrative Law*, 24 Md. L. Rev. 1 (1964).

(6)

Equal Protection of the Law.

The lower court held two provisions of the Ordinance violative of the equal protection clause of the 14th Amendment as creating classifications lacking a rational basis for the achievement of the objectives of the Ordinance, viz., (1) § 20A-4(f) which renders confidential those statements filed by certain employees of the County, the County Board of Education and Montgomery Community College, but not those statements filed by other officials and (2) § 20A-3(b)(10) which excludes paid members of boards, commissions and committees appointed prior to the effective date of the law from coverage under the Ordinance. We think the lower court erred in so concluding.

The constitutional safeguard of the equal protection clause is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. *McGowan v. Maryland*, 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961). With respect to the provision that the financial disclosure statements of certain officials would be public while those of others would remain confidential, we agree with the County that its legislative body could rationally conclude that, with respect to certain positions, the public's interest in knowing that its employees are not involved in conflicts of interest outweighs the employees' interest in privacy to an extent that warrants public disclosure; whereas, with respect to certain other positions, the public's need to know the details of the employees' financial circumstances is somewhat less compelling, and thus the proper balance between the relevant interests of the public and those of the employees justifies confidential filing. The line drawn by the County Council in this respect in the Ordinance is essentially between

elected officials, attorneys, and high level public officers and employees, whose statements are public, and persons whose duties touch upon procurement and similar matters in which conflicts of interest can be an important problem, but whose activities in general are subject to a fair amount of supervision. We think the line drawn by the County does not offend against the equal protection clause. *See Broadrick v. Oklahoma, supra,* 413 U.S. at 607, note 5.

In providing that persons who accepted paid appointments to County boards and commissions at a time when financial disclosure of the kind required by the Ordinance was not a condition of holding the position may complete their terms of office without filing statements, the County Council could rationally conclude that the need for disclosure was greater in the case of elected officials and employees for whom no such "grandfather" arrangement was provided. We think the different treatment of these groups holding public positions is not irrational and accordingly is not vulnerable to attack on equal protection grounds. *See San Antonio Independent School District v. Rodriguez, supra.*

(7)

Alleged Violations of Montgomery County Charter and Code of Professional Responsibility.

The lower court held that §§ 20A-7 and 20A-8 of the Ordinance constituted "an unlawful and ultra vires delegation of authority, duties and powers of the County Attorney in violation of the provisions of Section 213 of the Montgomery County Charter.[8]

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8 Section 213 provides:

(continued)

As heretofore indicated, these sections of the Ordinance assign the County Attorney the functions of issuing advisory opinions concerning the applicability of the Ordinance to a County employee who requests such advice; investigating and reporting complaints of alleged violations; and seeking the appropriate court or administrative remedy where there is a failure to comply with the provisions of the Ordinance. The lower court was of the opinion that because § 213 of the Charter did not specifically include the functions assigned to the County Attorney by §§ 20A-7 and 20A-8, these sections were *ultra vires* the Charter. The court stated that as the previous County Charter had assigned the County Attorney "[s]uch other functions as may be provided by law or assigned to him by the county council," but the present Charter contained no such provision, the present Charter intended that the County Attorney perform "only those limited duties, powers and functions and exercise authority specifically granted in Section 213 of the . . . Charter."

We hold that the lower court was in error in so deciding. Section 213 of the Charter provides that the County Attorney shall be "the chief legal officer of the county" entrusted with the responsibility of conducting "all the law business of the county." Maryland Code (1973 Repl. Vol). Art. 25A, § 5(Q) authorizes the County to "enact local laws . . . to govern the conduct and actions of all

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8 (continued)

"The county attorney shall be the chief legal officer of the county, conduct all the law business of the county, and be the legal advisor to the council, the county executive and all departments or other instrumentalities of the county government, and he shall represent the county in all actions in which the county is a party."

. . . county officers in the performance of their public duties . . ."; and § 5(S) permits the County to enact all such ordinances "as may be deemed expedient in maintaining the . . . good government . . . of the county." These provisions, along with the power conferred on the County by § 29-10 of the State Act to enact a local financial disclosure law, plainly authorized the County Council to invest the County Attorney with the duties imposed upon him by §§ 20A-7 and 20A-8 of the Ordinance.[9]

The lower court was also in error in concluding that the responsibilities imposed upon the County Attorney by the Ordinance conflicted with three disciplinary rules of the Code of Professional Responsibility (Md. Rules, Appendix F), viz., DR 4-101(B), requiring an attorney to preserve confidences and secrets of a client; DR 5-101(B) restricting the occasions when an attorney may testify; and DR 7-101(A)(3) generally prohibiting an attorney from prejudicing or damaging his client during the course of the professional relationship. The lower court's holding was premised on the assumption that the County Attorney frequently represents County employees in judicial proceedings and renders legal advice to them and that § 20A-7(d), pursuant to which the County Attorney renders advisory opinions, created an attorney-client relationship. Under § 213 of the Charter, the County and its instrumentalities are the County Attorney's clients, not individual County employees. The County Attorney advises employees

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9 See Committee on Style, Charter Revision Commissions, *Commentary upon Proposed Charter, Montgomery County, Maryland* (May 21, 1968), at 22-23. The legislative history of the present Charter indicates that the Charter Commission intended no substantive changes in the duties of the County Attorney from those imposed upon him by the preceding Charter.

only insofar as their interests coincide with those of the County. We, therefore, hold that nothing in the Code of Professional Responsibility inhibits the County Attorney from performing the duties imposed upon him under the Ordinance.

JUDGMENTS REVERSED;
RESPONDENTS TO
PAY COSTS.

APPENDIX B

BILL NO. 48-73

Introduced: October 2, 1973
Enacted: June 18, 1974
Executive: June 28, 1974
Effective: June 28, 1974

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
October Legislative Session 1973
Chapter 61

AN ACT to add a new Chapter 20A, title "Financial Disclosure," to the Montgomery County Code 1972, to promote the trust and confidence of the citizens of Montgomery County in the integrity of County government by requiring the filing of statements disclosing financial interests of certain designated elected and appointed officials and candidates for certain offices in the county; to define the terms used in this Chapter; to enumerate persons holding office and candidates for office in the Executive and Legislative branches and in other instrumentalities of County government, the Board of Education, the Community College, the Maryland-National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission and the Washington Suburban Transit Commission who are required to file the statements provided for in this Chapter; to specify the content of the financial disclosure statements required to be filed; to establish a procedure for the filing of such statements and for the public review and inspection thereof; to establish procedures for the filing and review of nonpublic financial disclosure statements by certain employees; to define the duties and responsibilities of the Chief Administrative

Officer, the County Attorney and the Ethics Commission with respect to the provisions of this Chapter; to provide for a method of enforcement of the provisions of this Chapter by the County Attorney through appropriate injunctive relief in the courts; to provide for disciplinary action under appropriate personnel regulations for certain violations of this Chapter; to require the County Director of Finance or other appropriate payroll disbursing officers, upon issuance of a mandatory injunction against any person in violation of this Chapter, to suspend payment of any salary or other compensation to that person pending full compliance with the terms of the injunction; to provide for the adoption of Chapter 20A within incorporated municipalities in the County at the election of those municipalities; and to authorize the County Executive to adopt rules and regulations for the implementation of this Chapter.

Be It Enacted by the County Council for Montgomery County, Maryland, that –

Sec. 1. There is hereby added to the Montgomery County Code 1972 a new Chapter 20A, title "Financial Disclosure", to follow immediately after Chapter 20 thereof and to read as follows:

Chapter 20A Financial Disclosure

20A-1 Declaration of Purpose.

The General Assembly of Maryland, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officers, found and declared, in the enactment of Chapter 3 of the 1973 Acts of the General Assembly, that the people have a right to be assured that the financial interests of holders of and candidates for public office present

no conflict with the public trust. The General Assembly further provided, among other things, in Chapter 3 of the 1973 Acts of the General Assembly that each county of the State is directed to enact public financial disclosure requirements with respect to local officials in their respective jurisdictions, including candidates for election to public offices, of which the standards and requirements of disclosure must be substantially the same as those required for State officials and candidates. The County Council for Montgomery County endorses fully the concept of financial disclosure by public officials. It also urges the Maryland-National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission, and the Washington Suburban Transit Commission to adopt for their employees similar disclosure provisions to those contained in this Chapter. It is, therefore, the purpose of this Act to implement at the local level the provisions of Chapter 3 of the 1973 Acts of the General Assembly and to promote the continue trust and confidence of the citizens of Montgomery County in the integrity of their public officers.

20A-2 Definitions.

When used in this Chapter:

(a) "Interest" means any legal or equitable interest, whether or not subject to an encumbrance or a condition, which was owned or held, in whole or in part, jointly or severally, directly or indirectly, at any time during the calendar year for which a required statement is to be filed. "Interest" includes an interest in: any stock or similar security, pre-organization certificate or subscription, investment contract, voting trust certificate, limited or general partnership or joint venture, business trust, or certificate of interest or participation in a profit sharing agreement or in an oil, gas or other mineral royalty or lease; a

certificate or instrument of deposit for any of the foregoing; a certificate or instrument of interest or participation in, or a certificate or instrument convertible, with or without consideration, into, or a guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; a put, call, straddle, or other option or privilege of subscribing to or purchasing any of the foregoing; or any other equity interest, however evidenced, which entitles the owner or holder thereof, directly or indirectly, alone or in concert with others, to receive or direct any part of the profits from, or to exercise any part of the control over, a business entity, as well as any interest which, conditionally or unconditionally, with or without consideration, is convertible thereto. "Interest" also includes an interest in a note, bond, debenture, or any other evidence of a creditor interest. "Interest" shall not include, except as provided in Section 20A-6 below, an interest held solely in the capacity of a personal representative, agent, custodian, fiduciary or trustee. Interest shall include an interest of over $1000 in a time or demand deposit in a financial institution and an interest in an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period.

(b) "Business Entity" includes a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association, real estate investment trust, or other business trust.

(c) "Person" includes any natural person, corporation, partnership, trust, unincorporated association, or other organization, entity, or enterprise.

(d) "Child" includes a child, adopted child, stepchild foster child or grandchild, of whatever age.

(e) "Gift" includes any gift, reward, honorarium, or testimonial, whether or not it relates to the performance of official duties.

(f) "Retail Credit Account" means an open and credit account under which credit may be extended in connection with loans, sales of personal property or services and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder. The term "retail credit account" shall also mean an account with a public utility under the terms of which regular monthly bills are rendered for services provided to the consumer on a continuing basis.

20A-3 Persons Required to File Statements.

The following persons are required to file sworn statements provided for in this Chapter:

(a) All persons holding and candidates for the following elective offices in Montgomery County:

(1) County Executive
(2) County Council
(3) Members of the County Board of Education
(4) County Surveyor

(b) Except as otherwise hereinafter provided, all persons holding or appointed to the following offices and positions in Montgomery County:

(1) Chief Administrative Officer
(2) Deputy and Assistant Chief Administrative Officers
(3) Directors and Deputy Directors of the principal departments, offices and agencies in the County government
(4) The Superintendent of Police and Directors and Deputy Directors of the Offices of Architectural Services

and facilities Management

(5) County Attorney

(6) Deputy and Assistant County Attorneys

(7) Director of the Council Staff

(8) Deputy Director of the Council Staff

(9) Hearing Examiners

(10) Paid members of boards, commissions, committees, and authorities of the County government appointed on or after the effective date of this Chapter, not including those members who receive reimbursement of expenses only

(11) Except as hereinafter provided, all employees of the County who are responsible for making governmental decisions or taking governmental action or recommending any such decision or action with regard to:

(a) Contracting or procurement;

(b) Administering or monitoring grants or subsidies;

(c) Planning or zoning;

(d) Inspecting, licensing, regulating or auditing any non-governmental enterprise; and,

(e) Other activities where the decision or action has an economic impact on the interests of any non-governmental enterprise.

(12) All Montgomery County members of the Maryland-National Capital Park and Planning Commission

(13) All Montgomery County members of the Washington Suburban Sanitary Commission

(14) Employees of the County Board of Education who are responsible for making governmental decisions or taking governmental action or recommending any such decision or action with regard to:

(a) Contracting or procurement;

(b) Administering or monitoring grants or subsidies;

(c) Other activities where the decision or action has an economic impact on the interests of any non-governmental enterprise.

(15) Members of the Board of Trustees of the Montgomery Community College

(16) Employees of the Montgomery Community College who are responsible for making governmental decisions or taking governmental action or recommending any such decision or action with regard to:

(a) Contracting or procurement;

(b) Administering or monitoring grants or subsidies;

(c) Other activities where the decision or action has an economic impact on the interests of any non-governmental enterprise.

(17) Montgomery County members of the Washington Suburban Transit Commission.

(c) In addition to the persons enumerated in subsections (a) and (b) of this Section, the following persons shall be required to file sworn statements pursuant to this Chapter.

(1) Any other official, employee or appointee of the Executive branch of County government whom the County Executive shall be Executive Order designate for such filing as might be desirable to promote the trust and confidence of the citizens of the County in the Executive branch of County government.

(2) Any other official, employee or appointee of the Legislative branch of County government whom the County Council shall by resolution designate for such filing

as might be desirable to promote the trust and confidence of the citizens of the County in the Legislative branch of County government.

(3) Any other official, employee or appointee of any of the other organizations enumerated in subsections (a) and (b) of this Section whom those organizations shall designate in writing for such filing as might be desirable to promote the trust and confidence of the citizens of the County in such organizations.

(d) An employee who holds a position described in subsection 20A-3(b), (11), (14) or (16) need not file the sworn statement required by this Chapter if it is determined that the duties of the position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote or if the duties of the position are at such a level of responsibility that the submission of such sworn statement is not necessary because of the degree of supervision and review over the incumbent.

20A-4 Statement of Financial Interests to be Filed.

(a) Except as otherwise hereinafter provided, each person holding an office or position set forth in Section 20A-3(a) or 20A-3 (b) (1) through (10), (12), (13), (15) or (17) above on or after the effective date of this Chapter shall file with the Chief Administrative Officer for Montgomery County, on or before the 1st day of June of each year during which that person serves in such office or position, the sworn statement required by this Chapter for the calendar year immediately preceding each year in that office or position. Any person appointed to any offices or positions set forth in Section 20A-3(b) (10), (12), (13) or (17), on or after the effective date of this Chapter shall, where such appointment is made by the County Executive, file the initial statement required by

this Chapter before final action is taken by the County Council on the confirmation of such appointment. Where any such appointment is made by the County Council, the appointee shall file such initial statement after selection by the subcommittee of the Council, or the Council sitting as a committee of the whole, before the appointment is submitted to the full Council for action. No such statement filed by any appointee to a position set forth in Section 20A-3(b) (10) shall be made public until after final action on such appointment is completed.

(b) Except for a person who has filed a statement pursuant to subsection (a) above for the same year for which a statement otherwise would be required to be filed by this subsection, each candidate for nomination for, or election to, an office set forth in subsection (a) of Section 20A-3 above shall file with the Montgomery County Board of Supervisors of Elections, at or before the same time that person's certificate of candidacy is filed, the statement required by this Chapter, for the calendar year immediately preceding the year in which that certificate of candidacy is filed.

(c) If a certificate of candidacy is filed prior to January 1 of the year in which the election is held, the candidate shall, on or before the last day for the withdrawal of candidacy, file a supplementary statement for the calendar year immediately preceding the election; and if the candidate fails to do so, after written notice of this obligation given by the County Board of Supervisors of Elections at least 20 days prior to the last day for the withdrawal of candidacy, the candidate shall be deemed to have withdrawn his or her candidacy.

(d) Except as provided in subsection (3), the Board of Supervisors of Elections shall not accept any certificate

of candidacy or certificate of nomination unless a statement in proper form has been filed pursuant to this Chapter. Within 30 days of the receipt of a statement by the Board, the Board shall forward the statement to the Chief Administrative Officer for retention pursuant to the provisions of this Chapter.

(e) In the case of any candidate for any elective office described in subsection 20A-3 (a) to be filled in 1974, that person shall file the statement required by this Section within 60 days of the effective date of this Chapter. This initial statement may be either for the calendar year of 1973 or for the 12-month period immediately preceding the date of filing.

(f) Each person holding an office or position set forth in Section 20A-3 (11), (14), or (16), and such positions as may be designated pursuant to subsection 20A-3 (c) above, for confidential filing, on or after the effective date of this Chapter, shall file with the Director of his department, office or agency on or before June 1 of each year, the statement required by this Chapter for the calendar year immediately preceding each such year in that office or position. Each such Director, after reviewing the statement, shall forward it within 30 days to the Chief Administrative Officer who shall notify the Ethics Commission of the availability of the statement for review. Upon receipt of such notification from the Chief Administrative Officer, the Ethics Commission shall have a period of 120 days in which to complete any review of the statement which it may choose to conduct. The statement, filed pursuant to this subsection, shall not be made available to the public for examination. Nothing contained herein shall preclude the Ethics Commission from reviewing statements at any time.

(g) All persons holding positions described in Section 20A-3(b)(1) through (9) and (11) through (17) and 20A-3(c) on the effective date of this Chapter shall file the initial sworn statement required thereunder on or before September 15, 1974. Such statement may cover all of calendar year 1973 or the 12-month period immediately preceding the date of filing the statement.

(h) All statements filed by persons holding offices or positions set forth in Section 20A-3(a) or 20A-3(b) (1) through (10), (12), (13), (15), or (17), and such positions as may be designated pursuant to subsection 20A-3 (c) for public filing, shall be maintained by the Chief Administrative Officer and shall be made available by him, during normal office hours, for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as the County government may establish from time to time. Each statement shall be retained as a public record for at least four years following the termination of employment with the County of the person filing the statement. After the expiration of such four-year period, each such statement shall be destroyed.

(i) The Chief Administrative Officer shall provide forms for use in the filing of the statements required by this Chapter to the persons required to file such statements. Forms shall be made initially available by the Chief Administrative Officer no later than July 15, 1974 and no later than the 1st day of January, each year thereafter. The Chief Administrative Officer shall require that any person examining or copying such statements shall record that person's name, home address, and the name of the person whose disclosure statement was examined or copied.

(j) No statement required by this Chapter shall be used in any way for or be made available for, commercial purposes.

20A-5 Content of Statement of Financial Interests.

The sworn statement required to be filed by this Chapter shall contain schedules disclosing the following interests of the person making the statement, and the interests of that person's spouse, or dependent child, together with the specific information, for the calendar year for which the required statement is to be filed:

(a) A schedule of all interests (including leasehold interests and interests in an oil, gas or other mineral royalty or lease) in or with respect to any real property wherever situated. This schedule, as to each interest, shall include:

(1) The nature of the property and the location by street address, mailing address or legal description of the property;

(2) The nature and extent of the interest held, including any conditions thereto and encumbrances thereon;

(3) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(4) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(5) With respect to any interest transferred, in whole or in part, at any time during the year for which the statement is filed, a description of the interest transferred, the nature and amount of the consideration re-

in exchange therefor and the identity of the person to whom the interest was transferred; and

(6) The identity of any other person with an interest in the property.

(b) A schedule of all interests in any business entity or profession. This schedule, as to each such interest, shall include:

(1) The name and address of the business entity or profession, or where applicable, the exchange on which the stock of the business entity is traded.

(2) The nature and amount of the interest held, including any conditions thereto and encumbrances thereon; provided, however, that an amount of stock or like evidence of equity interest, at the option of the person making the report, may be reported by the number of shares held and, unless the corporation's stock is publicly traded on a stock exchange, in an over-the-counter market, or otherwise, the percentage of equity interest so held, instead of by dollar amount; and

(3) With respect to any interest transferred, in whole or in part, at any time during the year for which the statement is filed, a description of the interest transferred, the nature and amount of the consideration received in exchange therefor and, if known, the identify of the person to whom the interest was transferred.

(c) A schedule of all other assets of every nature whatsoever in excess of $1000 each not otherwise reported. All other assets of less than $1000 each may be reported collectively as miscellaneous assets.

(d) A schedule of all income received by the person required to file the statement during the year for which

the statement is filed, including the source of such income, and a statement of the gross income of the spouse and all dependent children of such person received during the year for which the statement is filed, including the source of any portion of such income which may reasonably be expected to have a direct or indirect effect on the activities with the County of the person required to file the statement; provided, however, that where the dislosure of such income or portion thereof would violate a professional confidence, such income or portion thereof need not be reported; and provided further, that such income need not be reported where diligent efforts have failed to produce any information relating thereto.

(e) A schedule of each gift of property, money or services in excess of $50 in value in the aggregate received, from any one person, including the forgiveness of any liability, received at any time during the year for which the statement is filed, by the person making the statement, or by any other person at the direction of the person making the statement, from, or on behalf of, directly or indirectly, any person who does business with the County or who is regulated, inspected or licensed by the County; provided, however, neither gifts received from the spouse or a relative of the employee or spouse up to and including a first cousin of the person making the statement, or from the spouse of any such relative, nor campaign contributions which are otherwise reported as required by law, need be disclosed. This schedule, as to each such gift, shall include:

(1) The nature and value of the gift; and

(2) The identity of the person from whom, or on behalf of whom, directly or indirectly the gift was received.

(f) A schedule of all offices and directorships held at any time during the year for which the statement is filed in any corporation or other business entity. This schedule, as to each such office or directorship shall include:

(1) The name and address of the principal office of the business entity;

(2) The title and nature of the office or directorship held; and

(3) The total amount of compensation received from the corporation or other business entity during the year for which the statement is filed.

(g) A schedule of all liabilities to any person doing business with the County or who is regulated, inspected or licensed by the County, owed at any time during the year for which the statement is filed, excluding retail credit accounts, by the person making the statement; and all liabilities to any person doing business with the County or who is regulated, inspected or licensed by the County, owed at any time during the year for which the statement is filed, excluding retail credit accounts, by the spouse or a child of the person making the statement, if the person making the statement was involved in the transaction giving rise to the liability. The schedule shall include a list of each liability, excluding retail credit accounts, in excess of $1000 regardless of to whom the liability is owed. Retail credit accounts of any amount and all other liabilities of less than $1000 each may be reported collectively as miscellaneous liabilities. This schedule, as to each such liability, except as otherwise reported, shall include:

(1) The identity of the person to whom the liability was owed;

(2) The amount of the liability owed as of the end of the year for which the statement is filed;

(3) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(4) The security given, if any, for the liability.

(h) A list of all members of the immediate family of the person making the statement required by this subtitle who are employed by the County in any capacity. For the purpose of this paragraph, the term "immediate family" includes only spouse and dependent children.

(i) Such additional interests or information as the person making the statement might desire to disclose in order to carry out the purposes and intent of this Chapter.

20A-6 Interests Attributable to Person Making Statement.

For the purpose of Section 20A-5, subsections (a) and (b) and the disclosures therein required, the following shall be considered to be the interests of the person making the statement:

(a) Any interest held by the spouse, father, mother, brother, sister or child of the person making the statement, if such interest was at any time during the year for which the statement is filed directly or indirectly controlled by the person making the statement.

(b) Any interest held by a business entity, in which business entity a thirty percent (30%) or greater equity interest was at any time during the year for which the statement is filed held by the person making the statement.

(c) Any interest held by a trust, other than a common trust fund, under which trust the person making the statement held a reversionary interest at any time during the year for which the statement is filed or under which trust the person making the statement was at any time during that year a trustor, if a revocable trust, or a beneficiary.

20A-7 Responsibilities of the County Attorney.

In addition to any other duties and responsibilities set forth in this Chapter, it shall be the function of the County Attorney for Montgomery County:

(a) To investigate complaints of alleged violations of this subtitle;

(b) To report alleged violations of this Chapter to persons alleged to be in violation thereof and to advise such persons as to steps necessary to be taken to comply with the provisions of this Chapter;

(c) To issue, upon written request of any person required to file a statement under this Chapter, advisory opinions with respect to any matter in which such person is involved concerning the applicability of this Chapter, but no such request, investigation made pursuant thereto, or opinion shall be made public without the consent of the person requesting the opinion;

(d) To issue and publish, upon written request of any other person, such advisory opinions on the requirements of this Chapter as the County Attorney may deem appropriate.

20A-8 Enforcement.

(a) Any person having reason to believe that a

violation of this Chapter exists is authorized to report such alleged violation in writing to the County Attorney or the Ethics Commission.

(b) Upon receipt of a report of an alleged violation of this Chapter by a person holding an office or position specified in Section 20A-3 (a) or 20A-3 (b) (1) through (10), (12), (13), (15) or (17) and 20A-3 (c) deemed by the County Attorney to be justified, or, in the absence of such report, in cases involving those offices or positions in which the County Attorney has reason to believe that an alleged violation exists, the County Attorney shall notify in writing the alleged violator of the nature and circumstances of the violation and shall advise such person of the steps necessary to be taken to comply with the provisions of this Chapter. In any case of a report of an alleged violation received by the Ethics Commission which it deems to be justified, or in any other case where the Commission believes an alleged violation exists, it shall refer such case to the County Attorney for action as prescribed above.

(c) If within thirty days after receipt of the notice of alleged violation from the County Attorney, the person alleged to be in violation of the provisions of this Chapter has not, without good cause, initiated action to comply with this Chapter, the County Attorney is authorized to file a petition in the Circuit Court for Montgomery County for a writ of mandamus, ordering the violator to take such actions as will cure the violation. The County Attorney shall give the alleged violator notice of the County Attorney's intention to file a petition at least fifteen days prior to filing that petition.

(d) The equity jurisdiction of the Montgomery County Circuit Court is hereby deemed to include juris-

diction to issue writs of mandamus as may be necessary to compel compliance with the provisions of this Chapter, and such writs shall be enforceable by contempt proceedings in accordance with the Laws of Maryland and Maryland Rules of Procedure relating to contempt.

(e) The County Director of Finance or the appropriate payroll disbursing officer for any of the organizations enumerated in Section 20A-3 above, upon the issuance of any writ of mandamus against a person subject to this Chapter, shall suspend payment of any salary or other compensation to that person pending full compliance with the terms of the writ. Such action shall be in addition to any penalties imposed under the personnel regulations.

(f) Upon receipt of a report of an alleged violation of this Chapter by a person holding an office or position specified in Section 20A-3(b) (11), (14) or (16), deemed by the County Attorney to be justified, or in the absence of such report, in cases involving these offices or positions where the County Attorney has reason to believe that an alleged violation exists, the County Attorney shall notify in writing the alleged violator of the nature and circumstance of the violation and shall advise such person of the steps necessary to be taken to comply with the provisions of this Chapter. If within thirty days after receipt of alleged violation from the County Attorney, the person alleged to be in violation of the provisions of this Chapter has not, without good cause, initiated action to comply with this Chapter, the County Attorney shall refer such case to the Director of the department, office, or agency in which the alleged violator is employed for appropriate action under the applicable personnel regulations.

20A-9 Rules and Regulations.

The County Executive is hereby delegated the power to adopt reasonable and necessary rules and regulations for the implementation and administration of this Chapter.

20A-10 Application.

This Chapter shall be effective throughout the County except in any incorporated town, village or other municipality which by law has authority to enact a law on the same subjects as covered by the various sections and provisions of this Chapter. If any such incorporated town, village or other municipality shall adopt this Chapter and request the County to enforce the provisions thereof with in its corporate limits, the County shall therafter administer and enforce the same within such incorporated town, village or municipality.

20A-11 Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence,

section, word or part had not been included therein and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 2. The Council hereby delcares that an emergency exists and that this legislation is necessary for the immediate protection of public health and safety. Therefore, this Act shall take effect on the date on which it becomes law.

Approved:

/s/ Neal Potter — June 21, 1974
President, Montgomery County Council

/s/ James P. Gleason — June 28, 1974
County Executive

ATTEST:

/s/ Kathleen A. Friedman — June 28, 1974
Deputy Secretary of the County Council